Supreme Court, U.S.
FILED
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No. 04 509

In The
Supreme Court of the United States

ESPERANZA SANCHEZ, and
AMARARNTE SANCHEZ,

Petitioners,

v.

THE COUNTY OF BERNALILLO
BOARD OF COUNTY COMMISSIONERS,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of New Mexico

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a county zoning decision denying the existing use of a property as a mobile home park, based on a zoning ordinance adopted after the park was established, but which lacked any articulated reasonable relation to any legitimate government interest, constituted a regulatory "taking" of property without just compensation under the Fifth Amendment, or a denial of equal protection of the law under the Fourteenth Amendment?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	5
I. New Mexico has failed to enforce this Court's precedent which holds that a particular zoning decision may violate the Takings Clause if it is not reasonably related to a legitimate state interest.	5
II. New Mexico law forecloses a landowner's right under the Equal Protection Clause to challenge the factual "nexus" between a zoning rule and its justification by presumptively relieving local governments of any requirement to articulate a justification in the first place.	7
III. Judicial scrutiny on at least the rational basis level should ensue when government zoning action seeks to dismantle an established private residential use, ejecting families from their homes	8
CONCLUSION	10
APPENDIX	App. 1

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Agins v. City of Tiburon, 447 U.S. 255 (1980) 9

Esmail v. Macrane, 53 F.3d 176 (7th Cir. 1995) 4

City of Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668 (1976) 6

City of Monterey v. Del Monte Dunes at Monterey, 526 U.S. 687 (1999) 6, 7, 8, 9

Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985) 4, 6, 7, 8

Dolan v. City of Tigard, 512 U.S. 374 (1994) 7

Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987) 7, 8

Penn Central Transp. Co. v. City of New York, 438 U.S. 104 (1978) 4, 9

Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302 (2002) 8

Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926) 6

Yee v. Escondido, 503 U.S. 519 (1992) 9

NEW MEXICO CASES

Miles v. Board of County Comm'rs, 1998-NMCA-118, 125 N.M. 608, 964 P.2d 169 (Ct.App. 1998) 6

Sanchez v. County of Bernalillo, 120 N.M. 395, 902 P.2d 550 (1995) 7

TABLE OF AUTHORITIES – Continued

Page

OTHER MATERIALS

David L. Callies, *Regulatory Takings and the Supreme Court: How Perspectives on Property Rights Have Changed from* ***Penn Central*** *to* ***Dolan****, and What State and Federal Courts are Doing About It*, 28 STETSON L. REV. 523 (1999) 7

Norman Karlin, *Back to the Future: From* ***Nolan*** *to* ***Lochner***, 17 SW. U. L. REV. 627 (1988) 9

Ronald J. Krotoszynski, Jr., *Fundamental Property Rights*, 85 GEO. L. J. 555 (1997) 9

Carol M. Rose, *Property as the Keystone Right?*, 71 NOTRE DAME L. REV. 329 (1996) 9

PETITION FOR A WRIT OF CERTIORARI

The petitioners, Esperanza and Amararnte Sanchez, respectfully pray that a writ of certiorari issue to review the decision of the New Mexico Supreme Court denying certiorari on the question presented on July 12, 2004.

OPINIONS BELOW

On November 20, 2003, the Board of County Commissioners of the County of Bernalillo, New Mexico denied Petitioners' application for a Special Use Permit to continue operating their mobile home park, which has existed for more than thirty years. The decision of the Board of County Commissioners is reprinted in the appendix at 9a, *infra*. Pursuant to State statute, Petitioners took their appeal to the Second Judicial District Court of the State of New Mexico, which affirmed the County's decision. The District Court's Decision and Opinion Memorandum is reprinted in the appendix at 1a, *infra*. The Court of Appeals for the State of New Mexico denied Petitioners' petition for writ of certiorari. That Order is reprinted in the appendix at 13a, *infra*. On July 12, 2004, the Supreme Court for the State of New Mexico denied petitioners' petition for writ of certiorari and Petitioners appeal therefrom. That Order is reprinted in the appendix at 14a, *infra*.

JURISDICTION

On July 12, 2004, Petitioners were denied relief by the highest court of the State of New Mexico, and timely invoke the jurisdiction of this Court pursuant to 28 U.S.C.

§ 1257(a) on the grounds that the ruling of the State Court is repugnant to Petitioners' rights under the Fifth and Fourteenth Amendments to the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amend. V provides in pertinent part:

> [N]or shall private property be taken for public use, without just compensation.

U.S. Const., Amend. IV provides in pertinent part:

> [N]or shall any State .... deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioners operate a mobile home park near Albuquerque, in an area under the zoning jurisdiction of the County of Bernalillo in the State of New Mexico (hereinafter "the County"). Petitioner's land, now constituting approximately five (5) acres, was first developed as a mobile home park by its prior owner in around 1972. Some of the families who first settled this mobile home park continue to live there to this day.

In 1981, the County changed its zoning ordinance to set a minimum lot size of ten (10) acres for mobile home parks. No reason or purpose for the minimum lot size appears from the record. The County has never attempted to articulate how the minimum lot size rule is reasonably

related to any legitimate government interest. The County has always assumed, and the New Mexico courts have affirmed, that any zoning ordinance is generally "constitutional" and legally unassailable, and that it is Petitioner's burden to prove that the regulation is irrational.

Existing small mobile home parks, including this one, were issued conditional use permits to continue to operate. After Petitioners bought this property, however, the County repeatedly sought to close the mobile home park. Now the County asserts that permission to use this property as a mobile home park expired in 1985. To resolve prior litigation over the matter, the Petitioners and the County entered into an agreement whereby the mobile home park would remain open until September, 2005, pending approval of a new application for a special use permit.

Petitioners duly applied for the special use permit ("the Permit") to use their property as a mobile home park. The County zoning staff raised concerns related to the spacing and number of lots and lighting for the park. Petitioners rectified each of these other concerns, and submitted an amended application. The County Commission, however, denied the Permit, citing the ten acre minimum.

Petitioners appealed the denial of the Permit to the District Court for the Second Judicial District of the State of New Mexico. The District Court affirmed the County's denial of the Permit on the grounds that the park did not meet the ten acre minimum lot size. The District Court recognized that Petitioners had submitted revised plans which would have satisfied each of the County's expressed concerns. However, the District Court concluded that "a

ten acre lot size is mandatory, and [Petitioners] are unable to achieve it." Appendix at 8a, *infra*.

Before the County and again in the District Court, Petitioners challenged the denial of the Permit and the ten acre minimum lot size rule as not being rationally related to any legitimate governmental interest, and therefore in violation of the Constitutions of the United States and the State of New Mexico, and as exhibiting "selective, purposeful discrimination." *Esmail v. Macrane*, 53 F.3d 176, 178-80 (7th Cir. 1995).

The District Court repudiated Petitioners' equal protection argument on the grounds that distinguishing between large and small mobile home parks did not invoke any protected class, and declined to subject the decision to rational basis review. *Cf. Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985).

The New Mexico courts denied Petitioners' takings clause claims on the grounds that the County's refusal to permit use as a mobile home park did not deprive the Petitioners of all use of the property. New Mexico courts thus incorrectly disregarded this Court's standards for partial regulatory takings under the Fifth Amendment. *See Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978) (partial regulatory taking is compensable when it interferes with property owner's "reasonable investment-backed expectations"). Over the past two decades, Petitioners have made substantial improvements to the park infrastructure. The County had notice of these investments, indeed, the County had demanded that at least some of the improvements be made, including improvements to the lighting and sewage treatment system for the park, as a condition of

dismissing nuisance citations against the Petitioners. Petitioners therefore reasonably expected that, when they filed a new application for a special use permit, the existing use of the property as a mobile home park would not be arbitrarily denied.

Instead, the District Court placed the burden on Petitioners to prove the lot size rule was unconstitutional. The District Court did not require the County to articulate any governmental interest served by the rule. Hence, no governmental interest was asserted other than "the legislature's sense of 'the general good.'" Appendix at 1a, *et seq*. The District Court thus applied the County's lot size rule without meaningful judicial scrutiny. The New Mexico Court of Appeals denied Petitioners' petition for writ of certiorari. The New Mexico Supreme Court denied Petitioners' petition for writ of certiorari on July 14, 2004.

REASONS FOR GRANTING THE WRIT

I. New Mexico has failed to enforce this Court's precedent which holds that a particular zoning decision may violate the Takings Clause if it is not reasonably related to a legitimate state interest.

To foreclose judicial scrutiny and prevail in a land use dispute in New Mexico, all a governing body needs to do is show that the decision was based on a zoning ordinance. Upon such a showing, all meaningful review ceases. New Mexico views any zoning regulation, no matter how arbitrary or irrational, as presumptively constitutional, apparently relying on this Court's approval of the general

concept of zoning in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), and language from *City of Eastlake v. Forest City Enterprises, Inc.*, 426 U.S. 668 (1976), indicating that once a zoning ordinance is found to be reasonable "nothing more is required by the Constitution". *See, e.g., Miles v. Board of County Comm'rs,* 1998-NMCA-118 at ¶ 10, 125 N.M. 608, 964 P.2d 169 (Ct.App. 1998) *quoting Eastlake*, 426 U.S. at 677.

This Court's jurisprudence holds, to the contrary, that "a particular zoning decision," may violate the Takings Clause if it is not reasonably related to a legitimate state interest. *See City of Monterey v. Del Monte Dunes at Monterey*, 526 U.S. 687, 705 (1999); *Cleburne, supra.* Petitioners challenge the denial of their Special Use Permit under the "takings" clause of the Fifth Amendment, because the ten acre minimum lot size requirement is not reasonably related to a legitimate state interest and unconstitutionally deprives them of reasonable investment-backed expectations in their continued use of the property. Petitioners also challenge the denial of their Special Use Permit under the equal protection clause of the Fourteenth Amendment because there is no legitimate state interest for distinguishing between smaller and larger mobile home parks. Indeed, small parks fit in better with the surrounding neighborhood.

The District Court erred when it decided that the County did not even have to defend its application of the rule requiring mobile home parks to be at least ten acres in size. The State Supreme Court denied certiorari; thus, Petitioners have been deprived of meaningful judicial review of a zoning decision which will dislodge some twenty-five families from their homes. The lower court decision runs afoul of this Court's interpretation

of the Takings Clause to require, to begin with, some "proffered justification" for depriving the landowner of a use for the property. *See, e.g., Monterey*, 526 U.S. at 706.

II. New Mexico law forecloses a landowner's right under the Equal Protection Clause to challenge the factual "nexus" between a zoning rule and its justification by presumptively relieving local governments of any requirement to articulate a justification in the first place.

In *Monterey*, *Cleburne* and other cases, this Court has articulated a rational basis test for zoning decisions with a shifting burden of proof, first requiring the governmental entity to establish the legitimate basis for its decision or rule, then acknowledging as a jury question, with the landowner bearing the burden of proof, whether there is a reasonable nexus between the proferred justification and the decision or rule. *Monterey, supra*; *Cleburne, supra; Dolan v. City of Tigard*, 512 U.S. 374 (1994). *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987); *see also* David L. Callies, *Regulatory Takings and the Supreme Court: How Perspectives on Property Rights Have Changed from* ***Penn Central*** *to* ***Dolan****, and What State and Federal Courts are Doing About It*, 28 STETSON L. REV. 523, 568 (1999) ("government must first establish the legitimacy of the purpose for the exaction, dedication or fee before proceeding to" the nexus inquiry).

New Mexico case law, however, has lagged behind, viewing any all "zoning" as a generally valid exercise of police power without requiring the government to justify depriving a landowner of a particular use of the land. *See, e.g., Sanchez v. County of Bernalillo*, 120 N.M. 395, 397,

902 P.2d 550, 552 (1995) (discussing with approval authorities in which the court "either implicitly or expressly found that the regulation at issue was a valid exercise of police power"). Thus, the District Court here never required the County to articulate what problem small mobile home parks pose. The County failed to show, and was never required to show, how smaller mobile home parks harm the public in ways that larger parks do not. *See Cleburne, supra*. This is not a case in which the nexus between the rule and its asserted public purpose is "attenuated". *Cleburne*, 473 U.S. at 446. This is a case in which a legitimate state interest has not been articulated at all. *See, e.g., Id.* at 453 *(Steven, J., concurring, joined by Burger, C.J.) ("What is the public purpose that is being served by the law? What is the characteristic of the disadvantaged class that justifies the disparate treatment?).* No matter how low the Court sets the bar of rationality for a zoning rule, the County has not hurdled it. The County was never required to try. There was never any meaningful judicial review of the decision to close the park and remove these families from their homes.

III. Judicial scrutiny on at least the rational basis level should ensue when government zoning action seeks to dismantle an established private residential use, ejecting families from their homes.

Monterey, its antecedents, and its progeny have generally involved denials of prospective development, conditions placed on development, or moratoria on future development. *See, e.g., Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002); *Nollan v. California Coastal Comm'n*, 483 U.S. 825

(1987); *Agins v. City of Tiburon*, 447 U.S. 255 (1980). This Court has addressed burdens placed on existing uses, *see, e.g., Yee v. Escondido*, 503 U.S. 519 (1992), but not the deprivation of existing residential uses after *Monterey*.

If an owner's mere expectation that he will be allowed to develop the property is entitled to substantial review under *Penn Central* and *Monterey*, then the Constitution protects present, actual, existing uses of private land, particularly, existing residential use by persons of modest means. At least a minimum level of judicial scrutiny should secure this fundamental constitutional right in property. *See, e.g.*, Ronald J. Krotoszynski, Jr., *Fundamental Property Rights*, 85 GEO. L. J. 555 (1997); Carol M. Rose, *Property as the Keystone Right?*, 71 NOTRE DAME L. REV. 329 (1996); Norman Karlin, *Back to the Future: From* ***Nolan*** *to* ***Lochner***, 17 SW. U. L. REV. 627 (1988). The Takings Clause ensures that individual landowners are not singled out to bear burdens which should be borne by the public as a whole. The Equal Protection Clause similarly prohibits illegitimate discrimination. The zoning regulation in question arbitrarily burdens and discriminates against Petitioners and their tenants, without any legitimate explanation, justification, reason or purpose. If the New Mexico courts' error is not correct, Petitioners' tenants will be forced out of their established homes and school districts in a desirable neighborhood, to relocate to the far outskirts of Albuquerque's urban area, crowded into dusty, windswept *colonias* on the desert plateau. The Constitution clearly does not allow this, but the New Mexico courts are so deeply entrenched in erroneous precedent that Petitioners now must come to this Court begging for relief.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court grant the petition for writ of certiorari and set this matter for plenary consideration.

Respectfully submitted,

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STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

ESPERANZA SANCHEZ and
AMARANTE SANCHEZ,

Plaintiffs/Appellants,

v. **CV-2003-08475**

THE COUNTY OF BERNALILLO,
BOARD OF COUNTY COMMISSIONERS,

Defendant/Appellee.

DECISION and MEMORANDUM OPINION

(Filed Apr. 21, 2004)

THIS matter comes to the Court's attention as a result of Appellants' appeal from the November 20, 2003, decision of the Board of County Commissioners adopting the County Planning Commission's decision to deny a Special Use Permit (SUP) for a mobile home park on property owned by Appellants. On appeal, Appellants raise the following issues: (1) whether the County Commission erred by failing to remand the matter for another hearing when Mr. Sanchez was unable to attend the hearing for health reasons? (2) whether the County Commission applied an arbitrary minimum lot size standard for mobile home parks which lacks any rational basis, and has otherwise never been enforced, in violation of the due process, equal protection and takings provisions of the state and federal constitutions? and (3) whether the County Commission's findings pertaining to the mobile home park were supported by substantial evidence? The Court has reviewed the record on appeal as well as all of the documents filed by the parties,

under the standard of review required by Rule 1-074 NMRA (2004), and its decision follows.

Background

The property in question, on 4th Street just south of Alameda, was established as a mobile home park in 1973, during the five month lapse in the zoning ordinance. In 1974, the owner applied for a Non-Conforming Use (NCU) status, which was granted until May, 1985. On May 17, 1985, the original property owners received a letter from the Zoning Department informing them that their permit had expired and advising them that they could either remove the mobile home park or apply for an SUP. The original owner declared bankruptcy, and the trustee in bankruptcy filed an application for an SUP on April 22, 1986. The current owners, Appellants, purchased the property while it was being considered for the SUP. The application was denied, and on April 22, 1987, Appellants sought judicial review in the Second Judicial District. Their case was dismissed for lack of prosecution on May 24, 1989. After several years of enforcement activities, Appellants signed an undated agreement with the County in which Appellants agreed to remove the mobile home park from the site on or before September 5, 2005. The same agreement also made clear that Appellants were not precluded from once again applying for a Special Use Permit.

Appellants filed their application for an SUP on July 3, 2003, and a hearing was set before the County Planning Commission for September 3, 2003. Appellants appointed an agent to represent them on matters concerning the subject property. The agent appeared at the September 3 hearing and requested that the matter be deferred for thirty days because Appellants had recently submitted a

revised site plan and wanted staff to have an opportunity to review it. The request was granted, and the matter was scheduled to be heard at the next meeting, on October 1, 2003. At the October meeting, Appellants, through their agent and also through their attorney, once again sought a deferral, this time because Mr. Sanchez was in the hospital. No Commissioner made a motion for deferral so the matter was heard that day. The County Planning Commission denied the request for the SUP, and Appellants appealed the matter to the Bernalillo County Board of County Commissioners which held a *de novo* hearing and decided to adopt the recommendation of the Planning Commission. This appeal arises from that decision.

Standard of Review

The District Court reviews agency decisions to determine if they are arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or, otherwise not in accordance with law. Rule 1-074(Q) NMRA 2004. When viewed in light of the whole record, a ruling by an administrative agency is arbitrary and capricious if it is unreasonable or without a rational basis. *Snyder Ranches, Inc. v. Oil Conservation Comm'n*, 110 N.M. 637, 639, 798 P.2d 587, 589 (1990). Furthermore "in resolving ambiguities in the statute or regulations which an agency is charged with administering, the Court generally will defer to the agency's interpretation if it implicates agency expertise." *Atlixco Coalition v. Maggiore*, 1998-NMCA-134, ¶ 30, 125 N.M. 786. The District Court neither retries the case, admits new evidence, nor substitutes its judgment for that of the administrative agency. *Groendyke Transp., Inc. v. N.M. State Corp. Comm'n*, 101

N.M. 470, 476, 684 P.2d 1135, 1141 (1984) (internal citations omitted).

Analysis

(1) Whether the County Commission erred by failing to remand the matter for another hearing when the Plaintiff was unable to attend the County Planning Commission meeting for health reasons?

Appellants do not address this question in the body of their Statement of Appellate Issues. Issues raised but not briefed are considered waived. *See Silverman v. Progressive Broadcasting, Inc.*, 1998-NMCA-107, ¶ 41, 125 N.M. 500 (referring to issues raised in a docketing statement).

(2) Whether the County Commission applied an arbitrary minimum lot size standard for mobile home parks which lacks any rational basis, and has otherwise never been enforced, in violation of the due process, equal protection and takings provisions of the state and federal constitutions?

Appellants contend that "the County needs to defend its application of the rule requiring mobile home parks to be big: at least 10 acres." (SOI at 6) However, economic and social legislation and classifications based on property are reviewed under the rational basis standard which places the burden squarely on the opponent of the legislation to prove that the law lacks a reasonable relationship to a legitimate governmental purpose. *See Marruju v. New Mexico Hwy Transp. Dep't*, 118 N.M. 753, 757, 887 P.2d 747, 751 (1994). "The opponent's burden is difficult because they must demonstrate that the challenged legislation is clearly arbitrary and unreasonable, not just that it

is possibly so. The court will uphold the statute if any state of facts can be discerned that will reasonably sustain the challenged classification." *Id.* at 758 (internal citations omitted).

Appellants have not met their burden of proving that the ten acre lot size requirement for mobile home parks lacks a reasonable relationship to a legitimate governmental purpose. Rather, they state that there is no good reason for making mobile home parks big and that their agent set forth a good reason for keeping them small, i.e., they fit in better with the surrounding neighborhood. (SOI at 6). Appellants also state that the record lacks evidence to support the ten acre minimum. However, as Appellee points out, "due process does not require a legislative body to perform any particular studies or prepare any particular analysis to justify its decisions." (Appellee SOI at 12 quoting *Smithfield Concerned Citizens for Fair Zoning v. Town of Smithfield*, 907 F.2d 239, 245 (1st Cir. 1990) citing *Vance v. Bradley*, 440 U.S. 93, 109-12 (1979)).

Therefore, in the absence of any proof (indeed, any argument) that the County's choice of a ten acre minimum for mobile home parks is arbitrary and capricious or that the County does not merit "the traditional deference accorded by courts to the legislature's sense of "the general good," the Board's decision did not violate Appellants' due process rights. Furthermore, given that Appellants did not argue that they were members of a protected class, they also have not shown a violation of the Equal Protection Clause. And, because Appellants' right to operate a mobile home park expired in 1985 they had no enforceable right to continue to operate and no cognizable right under the takings clause. *See Environmental Control, Inc. v. City of Santa Fe*, 2002-NMCA-003, ¶ 11, 131 N.M. 450 (no cognizable right under

the takings clause where plaintiff's right to continue business was terminable at City's option). Another reason Appellants did not suffer a violation of the takings clause is because "a regulation . . . that does not deprive a property owner of all or substantially all beneficial use of property simply does not implicate an interest protected by the takings clause." *Estate and Heirs of Sanchez v. County of Bernalillo*, 120 N.M. 395, 397, 902 P.2d 550, 557 (1995).

The County has no obligation to abide by its own rules and regulations, namely County Resolution No. 116-86, *See Atlixco Coalition v. County of Bernalillo*, 1999-NMCA-088, 127 N.M. 549 (determining that Res. 116-86 has the force of law), and the Zoning Code. Resolution 116-86 makes clear that an SUP applicant:

> must demonstrate that the existing zoning is inappropriate because:
>
> 1. There was an error in the original zone map.
>
> 2. Changed neighborhood or community conditions justify a change in land use or
>
> 3. A different use category is more advantageous to the community as articulated in the Comprehensive Plan or other County Master Plan, even though (1) and (2) above do not apply.

Appellants have not so demonstrated. In fact, they make no mention of the above factors in their brief.

Section 18.B.17.j. of the Zoning Code states that "[t]he minimum lot size per mobile home park shall be ten acres." This park is a little over five acres. Therefore, even if the

park could meet all of the requirements regarding landscaping, open space, walls, lighting, etc. it simply cannot meet the lot size requirement – no matter how many times Appellants revise their plans. Given that the ten acre lot size is mandatory, the Board did not have the authority to waive this requirement. *See Burroughs v. Bd. of County Commissioners*, 88 N.M. 303, 305, 540 P.2d 233, 235 (1975) ("[special use permits] may be treated as a legislative process or the exercise of a legislative function, the conditions for which must be found in the zoning ordinance and may not be varied") "quoting C.J.S. § 273, at 1038-39 (1958)).

Based on the foregoing the lot size requirement was not arbitrary and there was no violation of Appellants' constitutional rights.

3. Whether the County Commission's findings pertaining to the mobile home park were supported by substantial evidence?

The Commission's findings were as follow:

1. The request is for a special use permit.

2. "The request is the result of a zoning violation in that the property is being used as a mobile home park without the proper zoning.

3. The 5.02 acre subject site does not meet the minimum lot size requirement of ten acres for Mobile Home Parks as specified in Section 18.B.17.j of the Bernalillo County Comprehensive Zoning Ordinance.

4. The request does not meet the requirements of Section 18.B.17 a (width of mobile home space, b (spacing between units), f (solid wall), g (driveway width), h (lighting), j (lot size), n (landscaping), and o (usable open space).

5. The request is not consistent with Resolution 116-86 in that the applicant has failed to demonstrate that the existing zoning is inappropriate.

6. The applicant has failed to demonstrate that the request is consistent with the health, safety and welfare of the residents of the County in that the layout of the mobile home park is in violation of the Bernalillo County Housing and Fire Codes."

Appellants dispute only finding no. 4, not because they have satisfied the lot size requirement but because their revised plans would allegedly satisfy the other requirements. Even if their new plans would satisfy all but the lot size requirement, it would not change the outcome because a ten acre lot size is mandatory, and Appellants are unable to achieve it.

Conclusion

The decision of the Bernalillo County Board of County Commissioners is **AFFIRMED**.

IT IS SO ORDERED.

/s/ Wendy E. York
WENDY E. YORK
DISTRICT JUDGE

This is to certify that a true and correct copy of the foregoing document was been mailed/delivered/ or otherwise provided to Hazen Hammel and Patrick Trujillo on the 21st day of April, 2004

CV-2003-08475

[LOGO] **County of Bernalillo**
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NOTIFICATION OF DECISION
BOARD OF COUNTY COMMISSIONERS

November 20, 2003

Amarante and Esperanza Sanchez
P.O. Box 10343
Albuquerque, NM 87184

SUBJECT: FILE NO: CO-30017/CSU-30015

LEGAL DESCRIPTION: Tierra Encantada, agent for Amarante & Esperanza Sanchez, appeals the County Planning Commission's recommendation for denial of a Special Use Permit for a Mobile Home Park on Lot B1A and a portion of 16C2, MRGCD Map #24, SP-87-226, Hunicks Redivision of Land of Rosenda Sandoval de Saiz, located at 9135 Fourth Street NW, on the west side of Fourth Street between Alameda Boulevard and Ortega Road, zoned R-1 & C-1, containing approximately 5.02 acres. (C-15) (Original request submitted by Tierra Encantada, agent for Amarante & Esperanza Sanchez)

ACTION: **DENIED THE APPEAL; THEREBY UPHOLDING THE DECISION OF THE COUNTY PLANNING COM-MISSION TO DENY THE SPECIAL USE PERMIT FOR A MO-BILE HOME PARK**

To Whom It May Concern:

At the November 18, 2003 public hearing, the Board of County Commissioners voted to deny the appeal; thereby upholding the County Planning Commission's decision to deny a Special Use Permit for a Mobile Home Park on Lot B1A and a portion of 16C2, MRGCD Map #24, SP-87-226, Hunicks Redivision of Land of Rosenda Sandoval de Saiz, located at 9135 Fourth Street NW, on the west side of Fourth Street between Alameda Boulevard and Ortega Road, zoned R-1 & C-1, containing approximately 5.02 acres. The decision was based on the following Findings:

1. The request is for a Special Use Permit for a Mobile Home Park on Lot B1A and a portion of 16C2, MRGCD Map #24, SP-87-226, Hunicks Redivision of Land of Rosenda Sandoval de Saiz, located at 9135 Fourth Street NW, on the west side of Fourth Street between Alameda Boulevard and Ortega Road, zoned R-1 & C-1, containing approximately 5.02 acres.

2. The request is the result of a zoning violation in that the property is being used as a mobile home park without the proper zoning.

3. The 5.02 acre subject site does not meet the minimum lot size required of ten acres for Mobile Home Parks as specified in Section 18.B17 j of the Bernalillo County Comprehensive Zoning Ordinance.

4. The request does not meet the requirements of Section 18.B.17 a (width of mobile home space), b (spacing between units), f (solid wall), g (driveway width), h (lighting), j (lot size), n (landscaping), and o (usable open space).

5. The request is not consistent with Resolution 116-86 in that the applicant has failed to demonstrate that the existing zoning is inappropriate.

6. The applicant has failed to demonstrate that the request is consistent with the health, safety and welfare of the residents of the County in that the layout of the mobile home park is in violation of the Bernalillo County Housing and Fire Codes.

If you have any questions, please feel free to contact me directly at 314-0384.

Sincerely,

Nano K. Chavez
Nano K. Chavez
Planning Manager

NKC/drm

cc: File
CPC Members
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IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

ESPARANZA SANCHEZ and AMARANTE SANCHEZ,

Plaintiffs-Appellants,

vs.

THE COUNTY OF BERNALILLO, BOARD OF COUNTY COMMISSIONERS,

Defendant-Appellee.

No. 24,872
Bernalillo County
CV-2003-08475

ORDER

(Filed May 27, 2004)

This Court has considered Esperanza Sanchez and Amarante Sanchez Rule 12-505 Petition for Writ of Certiorari.

THE COURT ORDERS that the petition is **DENIED.**

/s/ A. Joseph Alarid
A. JOSEPH ALARID, Judge

/s/ Celia Foy Castillo
CELIA FOY CASTILLO, Judge

/s/ Ira Robinson
IRA ROBINSON, Judge

THE SUPREME COURT
OF THE STATE OF NEW MEXICO

July 12, 2004

ESPARANZA SANCHEZ and
AMARANTE SANCHEZ,

Plaintiffs-Petitioners,

vs.

THE COUNTY OF BERNALILLO,
BOARD OF COUNTY COMMISSIONERS,

Defendant-Respondent.

ORDER

This matter coming on for consideration by the court upon petition for writ of certiorari, and the Court having considered said petition, and being sufficiently advised, Chief Justice Petra Jimenez Maes, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Richard C. Bosson, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is **denied** in Court of Appeal number **24872**.

IT IS SO ORDERED.

WITNESS, The Hon. Petra Jimenez Maes, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 12th day of July, 2004.

/s/ Madeline Garcia
(SEAL) Madeline Garcia, Chief Deputy Clerk